

Members

Rep. John Day, Chairperson
Rep. Vanessa Summers
Rep. Cleo Duncan
Rep. Brent Steele
Sen. Richard Bray
Sen. David Ford
Sen. Anita Bowser
Sen. Billie Breaux
Bruce Pennamped
Karon Perkins
Honorable Cynthia Ayres
Carol Branham



INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

LSA Staff:

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Authority: IC 33-2.1-10-1

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MEETING MINUTES¹

Meeting Date: July 27, 2000
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 125
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. John Day, Chairperson; Rep. Cleo Duncan; Rep. Brent Steele; Sen. Richard Bray; Sen. Billie Breaux; Bruce Pennamped; Karon Perkins; Carol Branham.

Members Absent: Rep. Vanessa Summers; Sen. David Ford; Sen. Anita Bowser.

Call to Order/Overview of Committee's Duties

Representative Day called the meeting to order at approximately 10:10 a.m. After having the committee members and LSA staff introduce themselves, Representative Day asked Carrie Cloud, the staff attorney for the committee, to explain the committee's duties. Ms. Cloud stated that the committee is a statutory committee and the duties of the committee, which are set out in IC 33-2.1-10-6, are as follows: (1) to review the child support guidelines adopted by the Indiana Supreme Court and, if appropriate, make recommendations concerning any amendments to the guidelines; and (2) to review custody and educational expenses and other items relating to the welfare of a child of a

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

family that is no longer intact. In addition, Ms. Cloud explained that the Legislative Council has requested that the committee study issues concerning child custody, visitation and the age of emancipation, as suggested in SCR 51-2000 introduced by Senators Bray and Antich.

1998 Amendments to Child Support Guidelines

Jeff Bercovitz, Director, Probation and Juvenile Service, Indiana Judicial Center, informed the committee that the federal government requires all states to review their child support guidelines at least once every four years. This review must include a review of the economic basis of the guidelines. The Chief Justice of the Indiana Supreme Court requested that the Domestic Relations Committee of the Indiana Judicial Conference, which is comprised of judges from around the state and for which Mr. Bercovitz serves as staff attorney, conduct the review of the guidelines, which the committee has done every four years. For the most recent review, which was financed by a grant through the Family and Social Services Administration (FSSA), the committee first conducted a survey of judges and held a public hearing to determine what issues needed to be addressed. The problems that were identified were as follows:

- Irregular income (e.g., bonuses, commissions, overtime) was often being included in the gross income figure by averaging the amount of the irregular income over the entire year, even though the income was only received at particular times of the year, if at all. The Domestic Relations Committee suggested that as an alternate method of treating irregular income, judges consider computing a ratio of the basic child support obligation to the combined income of both parents and applying that ratio to the amount of irregular income to determine how much of the irregular income, if and when received, should be paid as child support.
- Health insurance premium costs were not addressed on the child support worksheet and premiums had increased since the guidelines were originally prepared. The Domestic Relations Committee revised the worksheet to apportion the cost of the premium between both parents and to give a credit to the parent who actually paid the premium.
- Prior-born and subsequently-born children were not addressed well on the worksheet, so this was revised.
- Uninsured health care costs (the "6% rule") was being computed correctly in most cases, but the worksheet did not reflect this, so the worksheet was revised to include the calculation.
- Only about 75-80% of case files (as determined by a random review) contained a completed child support worksheet. Because federal law and state supreme court rule both require a completed worksheet to be in every file, the Domestic Relations Committee revised the commentary to the guidelines to emphasize the importance of having a worksheet in the file.
- The most frequently mentioned issue was the treatment of college expenses. The Domestic Relations Committee created a separate worksheet that deals with college expenses which, once determined, are apportioned between the parents based on the ratio of each parent's income to the parents' combined income. This new worksheet also provides, in accordance with state law, for a reduction in the weekly child support amount for the period of time when a child is away at college.

Proposed Parenting Time Guidelines

Mr. Bercovitz informed the committee that during the public hearing held by the Domestic Relations Committee regarding the amendments to the child support guidelines, almost 40% of the comments received concerned visitation. As a result of these comments, which indicated that visitation practices varied not only between counties but often between

judges in the same county, the Domestic Relations Committee received permission from the Chief Justice of the Indiana Supreme Court to study the possibility of creating visitation guidelines. This study was also financed through a grant from FSSA and was conducted with the input of Brian Vargas from the IU Public Opinion Laboratory and Dr. Marguerite Rebesco, a clinical psychologist from Lake County. Mr. Bercovitz stated that one of the main goals of the committee was not to intrude upon areas concerning visitation that have been addressed legislatively.

Mr. Bercovitz stated that the Domestic Relations Committee was very intrigued with the child-centered or child-focused approach to visitation adopted by the Lake County courts which looks at a child's different developmental needs at different ages and first asks how visitation will affect the child, not the parents. While child-centered guidelines are still a new trend, other courts in Indiana and other states have either adopted or are considering them. In the study conducted by the Domestic Relations Committee, over half of the judicial officers and attorneys surveyed stated that Indiana should have statewide visitation guidelines and over 80% stated that if Indiana did adopt statewide guidelines, those guidelines should be child-centered. The opinions of judicial officers and attorneys were split on the issue of whether visitation guidelines should be presumptive or discretionary, with a majority of judicial officers expressing a preference that the guidelines be discretionary and a majority of the attorneys preferring presumptive guidelines. In response to a question from Senator Breaux, Mr. Bercovitz explained that presumptive guidelines, like the child support guidelines, would apply in all cases unless a court decides that evidence presented in a particular case proves that guidelines would not work in that case. With discretionary guidelines, there would be no presumption that the guidelines should apply to every case. In response to a question from Senator Bray regarding whether, if a presumptive approach were taken, a judge would have to explain any deviation from the guidelines in a court order, Mr. Bercovitz stated that although this explanation is required when the child support guidelines are deviated from, the Domestic Relations Committee has not yet decided if this requirement should also apply to presumptive visitation guidelines.

Mr. Bercovitz explained that the intended recipients of the visitation guidelines are families and children, who will be the primary users, judges and attorneys. He explained that the current draft of the proposed guidelines is divided into two main parts: (1) general provisions applicable to children of all ages; and (2) more specific provisions based on a child's age and dealing with holiday schedules. He explained that the guidelines use the term "parenting time" rather than "visitation" because the term "visitation" does not sufficiently convey the reality of the continuing parent-child relationship and that "parenting time" better emphasizes the importance of the time a parent spends with a child. Colorado has adopted this change in terminology. Mr. Bercovitz observed that the guidelines include a provision that states that scheduled parenting time is both a right and an obligation and that if a parent who is to have parenting time cannot arrange to pick up the child at the scheduled start time, it is that parent's responsibility to arrange alternate child care. This provision was based on comments by judges, a psychologist, custodial parents and noncustodial parents that the consistent failure of a parent to exercise visitation sends a very harmful message to the child. The guidelines also address transportation responsibilities, with the noncustodial parent picking up the child for visitation and the custodial parent picking up the child when visitation is over. The guidelines provide that the parents should attempt to resolve any disagreements regarding visitation before pursuing court action and that any such court action be referred to mediation.

Regarding specific provisions based on a child's age, Mr. Bercovitz noted that the Domestic Relations Committee acknowledged that many critical developments occur in the first few years of a child's life and minimal disruption to a child's schedule is important

during that period. Psychological research indicates that young children have a limited recall of persons whom they have not seen recently, so limited but frequent visits with the noncustodial parent are preferable over longer less frequent visits. Overnight visits between the noncustodial parent and an infant or toddler was an issue of much discussion. The current guideline draft provides that unless evidence is presented that the noncustodial parent does not have substantial child care experience, the noncustodial parent's visitation should include overnight visits. Addressing parenting time for the adolescent and teenager, the guidelines provide that regular parenting time of the noncustodial parent shall not be set aside merely because of the child's schedule. The Domestic Relations Committee recognized that visitation schedules could become very complicated due to a child's school or extracurricular activities and included several examples of how to schedule parenting time around such events. This is an area of the guidelines that is still undergoing much discussion by the Domestic Relations Committee.

Mr. Bercovitz explained that he and Judge Daniel F. Donahue, Clark County Circuit Court Judge and Chairman of the Domestic Relations Committee, have recently submitted an article to *Res Gestae* outlining the proposed guidelines and requesting comments. Once the comments are reviewed by the Domestic Relations Committee, the committee will submit a final draft to the Indiana Supreme Court for its consideration. Mr. Bercovitz expects this submission to occur by October 1 of this year. Mr. Bercovitz noted that he would provide the committee members with a copy of the final proposed guidelines that are submitted to the Supreme Court.

Senator Bray observed that the guidelines do not appear to address the problem raised by today's mobile society, particularly when parents live a great distance apart from each other. Mr. Bercovitz stated that the Domestic Relations Committee was somewhat reluctant to delve too much into this issue as it has been addressed legislatively in the past. In addition, he stated that the committee also believes it would be very difficult to draft general guidelines to apply in what are unique, very fact-sensitive situations. In response to questions from Representative Day, Mr. Bercovitz stated that he expected it would be a minimum of six months before any sort of visitation or parenting time guidelines might be adopted by the state supreme court and that if there is going to be opposition to the adoption of such guidelines, it would be a concern over having the guidelines apply statewide, not using a child-centered approach.

(A printed copy of Mr. Bercovitz's presentation is on file with the Legislative Information Center, labeled "Exhibit A." A copy of the proposed parenting time guidelines provided to the committee by Mr. Bercovitz is also on file with the Legislative Information Center, labeled "Exhibit B.")

Child Support Collection Update

Joe Mamlin, Deputy Director, Child Support Bureau, FSSA, presented the committee with information regarding three topics: (1) central collection and disbursement of child support; (2) collection of child support by private organizations (P.L. 213-1999); and (3) a general update on child support collection.

Mr. Mamlin informed the committee that one of the elements of the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or "welfare reform") passed by Congress in 1996 was a requirement that all states establish a single location for child support collections to be received and disbursed, known as a state disbursement unit (SDU). Indiana requested and received an exemption from this requirement in order to maintain the state's current system of having local court clerks collect and distribute child support payments. Indiana is currently the only state to have such an exemption. However,

even under the exemption, Indiana is still required to maintain a single collection and disbursement location for all wage withholding payments. Indiana currently has this option available to employers, but is rolling it out slowly in order to make sure that the cases are set up correctly and to avoid as many problems as possible. To date, the roll out of this system is going very smoothly. FSSA is working closely with the Auditor's office, since this system will require FSSA to process more disbursement checks. More electronic payments methods are also being investigated, including allowing employers to make wage withholding payments over the Internet. Mr. Mamlin estimates it will take at least a year to a year and a half to have this central collection and disbursement system fully implemented. In response to a question from Senator Breaux, Mr. Mamlin explained that Indiana's exemption from the SDU requirement for regular (non wage withholding) child support payments is permanent.

Mr. Mamlin reminded the committee that P.L. 213-1999 (HB 1590) required FSSA to establish a program that would allow county child support agencies to contract with private organizations for child support collection. FSSA established a committee and developed program guidelines for counties to follow. FSSA sent these guidelines to all county prosecutors before February 1, 2000. The guidelines included forms for the local agencies to provide feedback to FSSA, which FSSA will use to establish a list of private organizations that local agencies may contract with. Mr. Mamlin also stated that FSSA provided two training sessions on these guidelines at the recent annual Child Support Alliance training conference. To date, no county has entered into a contract with a private organization for the collection of child support.

Mr. Mamlin provided the committee with a chart representing the amount of child support collected for calendar years 1993 through 1999. (Exhibit C.) Mr. Mamlin noted that child support collections have increased in each of these years, with the biggest increase coming in 1999. He stated his belief that this increase is due in large part to the fact that in 1999 all 92 counties were using the Indiana Support Enforcement and Tracking System (ISETS). Indiana received certification from the federal government in 1999 for having the ISETS computer system fully implemented and received over \$2 million in a refund of fees that had been assessed for not having the system fully implemented sooner.

Mr. Mamlin also provided the committee with a handout listing the recipients of grants under FSSA's fatherhood program, which has been expanded and is now called the Indiana Fathers and Families Program. (Exhibit D.) Grant requests were received from organizations in each of the 92 counties. Due to limited funds, 36 grant requests were granted, with a total of almost \$2 million. The funds for these grants came from federal access and visitation money and Temporary Assistance to Needy Families (TANF) funds. The eight goals of the Fathers and Families Program are to: (1) increase fathers' involvement with their children; (2) increase paternity establishment; (3) increase child support payments; (4) improve fathers' access to supportive services; (5) improve fathers' parenting skills; (6) improve co-parenting relationships; (7) increase high school graduation rates/GED attainment; and (8) decrease out-of-wedlock pregnancies.

In response to questions from Representative Duncan, Mr. Mamlin stated that in addition to local Offices of Family and Children spreading the word in their communities, the availability of grants was announced in FSSA press releases and on the agency's website. He also explained that the application process for the grants that will run from July 1, 2001, to June 30, 2002, will begin in October of this year. Also in October, FSSA will be holding a Fathers and Families Conference in Indianapolis that will help to publicize the program.

Senator Breaux noted that there was recently a story in the news about a man whose lottery winnings were intercepted by FSSA to pay back child support and asked Mr.

Mamlin if this intercept were a result of the implementation of ISETS. Mr. Mamlin explained that FSSA has had an agreement with the lottery for several years regarding intercepting the winnings of individuals who owe back child support but acknowledged that the implementation of ISETS allows the information from the two agencies to be compared, and appropriate intercepts to be made, more quickly. Responding to another question by Senator Breau, Mr. Mamlin stated that although any large computer system is always going to have some glitches, all of the major problems with ISETS appear to have been corrected. He noted that FSSA is currently in the process of reviewing bids to contract with a new ISETS vendor, which should allow for a more performance-based relationship with the vendor, including more accountability of the vendor for system problems. Mr. Mamlin also noted that changes in federal law often require changes to be made to the ISETS program, which can cause problems. He told the committee that FSSA is also currently in the process of buying new hardware for the ISETS system because the current hardware is outdated.

Committee member Bruce Pennamped asked how, with the new central collection system, a noncustodial parent whose child support payments are made by wage withholding would get a certified copy of his payment record, which is often needed for court hearings and which can currently be received from the county clerk's office. Mr. Mamlin noted that since all counties are now on the ISETS system, the county child support agency will have access to the payment record, but there is still a question as to whether or not the clerk will certify a record of payment for payments that the clerk's office did not receive. He stated that this appears to be an issue that will have to be worked out between FSSA and the clerks.

In response to questions from Representative Day and committee member Karon Perkins, Mr. Mamlin explained that the chart of child support collections (Exhibit C) represents the total amount of child support collected in the Title IV-D program, including both new and ongoing cases and both TANF and non-TANF cases. Responding to a question from Representative Day, Mr. Mamlin noted that there is a long way to go to reach full compliance in payment of child support. Now that ISETS is on-line statewide, FSSA can finish case cleanup work and begin to calculate exactly how much child support is owed versus how much is actually being paid.

Public Testimony

Judith Stone, Plymouth resident, explained to the committee what she believes to be a flaw in the child support guidelines. She stated that her husband, who is ordered to pay child support, is a minority shareholder in a subchapter S corporation. The judge in her husband's case imputed as part of his income the portion of the company's earnings that are passed through to him for income tax purposes even though her husband did not actually receive this money because it was retained by the company for future expenses. Mrs. Stone expressed the opinion that imputing such income takes away the incentive to have a profitable business and is unfair, as there is no provision for a reduction in income if the business has a loss. At the committee's request, Jeff Bercovitz responded that he believes the judge in Mr. Stone's case made the correct decision under the guidelines but that this is an issue that the Domestic Relations Committee will most likely look at after the parenting time guidelines are completed. Committee member Bruce Pennamped noted that this is a significant issue and that this type of income is treated differently across the country. In response to a question from Representative Day, Mr. Bercovitz noted that so far, no Domestic Relations Committee has recommended amendments to the child support guidelines in a year other than the required review every four years, mostly as a product of the difficulty of getting all the members together to meet rather than a reluctance to review or amend the guidelines more often.

Adjournment

Representative Day stated that any committee member or member of the public who has an issue that he or she would like the committee to study should contact either Representative Day or Carrie Cloud, staff attorney for the committee, and a future meeting would be scheduled before November.

There being no further business to come before the committee, Representative Day adjourned the meeting at approximately 11:20 a.m.